



ATLANTA CINCINNATI COLUMBUS NEW YORK
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August 10, 2022

VIA ECF
 Hon. Vernon S. Broderick
 United States District Court
 Southern District of New York
 Thurgood Marshall United States Courthouse
 40 Foley Square, Room 415
 New York, New York 10007

**APPLICATION GRANTED
 SO ORDERED** 
VERNON S. BRODERICK
U.S.D.J. 08/10/22

Re: *Spectrum Dynamics Medical Limited v. General Electric Company, et al.*,
 Case No.: 18-cv-11386 (VSB)

Dear Judge Broderick:

We represent Defendants in the above-referenced action. We write pursuant to Rule 5.B of Your Honor's Individual Rules & Practices in Civil Cases and the Order dated August 3, 2022 (Doc. 503) to respectfully request that transcript of the April 29, 2022 *Markman* hearing be filed on the public docket with redactions of information that the parties have designated Highly Confidential or Confidential under the parties' Stipulated Confidentiality and Protective Order (the "Protective Order") (Doc. 156). The parties jointly respectfully request that before the transcript is made publicly available, the court reporter be directed to redact the passages highlighted on pages 16, 19, 26-27, 32, and 54-55, as set forth in Exhibit 1 hereto.

The presumption of public access to judicial documents can be overcome if countervailing factors warrant confidentiality. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006); *see also Nixon v. Warner Commc'n Inc.*, 435 U.S. 589, 598 (1978). Sealing of records may be justified to preserve "higher values," including the need to protect an entity from competitive injury. *Lugosch*, 435 F.3d at 124; *see also Tropical Sails Corp. v. Yext, Inc.*, No. 14-cv-7582, 2016 U.S. Dist. LEXIS 49029, at *10-11 (S.D.N.Y. Apr. 12) (risk of "competitive injury is sufficiently serious to warrant protection" of proprietary business information). Consistent with this, courts routinely permit sealing and redaction of competitively sensitive proprietary business information or information subject to a claim of privilege. *See, e.g., Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015); *Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc.*, 26 F. Supp. 2d 606, 614 (S.D.N.Y. 1998); *see also Nixon*, 435 U.S. at 598 (recognizing need to seal information that might "harm a litigant's competitive standing").

Here, the discussions in the transcript information that is assertedly competitively sensitive and proprietary information of one or both parties and, if disclosed, could pose a substantial risk of harm. This is the sort of sensitive information that courts consistently protect from disclosure. *See, e.g., Ferring B.V. v. Allergan, Inc.*, No. 12-cv-2650, 2017 U.S. Dist. LEXIS 150239, at *16 (S.D.N.Y. Sep. 7) (sealing documents containing proprietary information); *Encyclopedia Brown*, 26 F. Supp. 2d at 612 (sealing documents reflecting sensitive trade secret information).



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The parties' request is narrowly tailored to protect highly confidential information and does not deprive the public of access to critical information. For these reasons, the parties' respectfully request that the Court permit the requested redactions in the transcript of the April 29, 2022 *Markman* hearing.

Very truly yours,

/s/ Jesse Jenike-Godshalk

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cc: All Counsel of Record via ECF
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